

EXHIBIT "E"

Findings and Conditions of Approval for PLN2012-00243 (Planned District P-2012-243, Vesting Tentative Tract Map 8177, Private Street, and Preliminary Grading Plan) Fremont Gateway - 34044 Fremont Blvd, 3800 and 3858 Beard Road

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated January 24, 2013, incorporated hereby.

Planned District Findings:

- (a) *The proposed P district, or a given unit thereof, can be substantially completed within four years of the establishment of the district* in that there is nothing unusual about the subject site and no known significant environmental liabilities which could significantly delay the completion of the project;
- (b) *Each individual unit of development, as well as the total development, can exist as an independent unit capable of creating an environment of sustained desirability and stability, and the uses proposed will not be detrimental to present and potential surrounding uses, but will have a beneficial effect which could not be achieved under other zoning districts* in that the project would provide a private street and paseo network for vehicular and pedestrian access, respectively, and would be part of a homeowner's association which would be responsible for maintaining the architecture, landscaping, stormwater treatment facilities and other on-site improvements in a fully operational and aesthetically pleasing manner. In addition, the project design would minimize impacts on adjacent development through the provision of generous landscaped setbacks and an attractive street presence that orients certain units toward the public street sidewalks;
- (c) *The streets and thoroughfares proposed are suitable and adequate to carry anticipated traffic, and increased densities will not generate traffic in such amounts as to overload the street network outside the Planned District* in that the number of estimated trips generated by the project would increase existing traffic volumes on the adjacent roadway of Fremont Boulevard by less than 2.6 percent, and that the proposed private street network built with the development would afford suitable and adequate vehicular access and pedestrian circulation for the project;
- (d) *The proposed exceptions from standard ordinance requirements are warranted by the design and amenities incorporated into the precise site plan, in accord with adopted policy of the Planning Commission and City Council* in that the applicant has requested a rezoning to Preliminary and Precise Planned District that would foster the objectives of the project, which include blending of residential land use densities (or a density transfer); varied lots sizes and home configurations; orderly development in phases; and preservation and enhancement of an existing evergreen ash tree. The Planned District process would provide a means of effectuating desirable development due to the certain conditions and features applicable to the site;

- (e) ***The area surrounding said development can be planned and zoned in coordination and substantial compatibility with the proposed development*** in that the adjacent lands to the north, east and west all are zoned for and developed with single-family or multi-family uses, and the project design would be fully independent through the provision of its own private street so it would not conflict with adjacent improvements or land uses, or alter or otherwise impact existing circulation routes;
- (f) ***The P district is in conformance with the General Plan of the City of Fremont*** in that the proposed blended project density of 13.7 units per net acre would be consistent with the site's General Plan land use designations of Medium Density Residential (14.6-29.9 du/ac) and Low Medium Density Residential (8.8-14.5 du/ac) as stated in the staff report, and components of the project would comply with the applicable goals and policies of the Land Use, Community Character, Mobility and Health and Safety Chapters of the General Plan; and
- (g) ***Existing utility services serving the area are adequate for the population density being proposed*** in that such facilities exist and no additional off-site service mains would be needed to accommodate the project.

Vesting Tentative Tract Map No. 8177 Findings:

Based on the analysis of the project contained in the accompanying staff report, the proposed Vesting Tentative Tract Map is in conformance with the General Plan, FMC Section 8-1418, and the Subdivision Map Act, and none of the following findings can be made:

- (1) *The map fails to meet or perform one or more of the requirements or conditions imposed by the Subdivision Map Act and Chapter 1 of the Zoning Code (Subdivisions);*
- (2) *The proposed subdivision, together with the provisions for its design and improvements, is not consistent with applicable general and specific plans;*
- (3) *The site is not physically suitable for the type or proposed density of development;*
- (4) *The design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;*
- (5) *The design of the subdivision or the type or improvements is likely to cause serious public health problems; and*
- (6) *The design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.*

Preliminary Grading Plan Findings:

- (a) ***The proposed grading plan will not have an appearance, due to the grading, excavation or fill, substantially and negatively different from the existing natural appearance*** in that it is designed to create drainage patterns which respect the existing topography adjacent to the project site, and very minimal retaining walls would be needed to achieve level building pads and positive drainage into the on-site stormwater treatment facilities and off-site public storm drain system;
- (b) ***The proposed project will not result in geologic or topographic instability on or near the site*** in that all graded areas would be engineered with fill material compacted in accordance with the specifications of the Grading, Erosion and Sedimentation Chapter of the Fremont Municipal Code and Project Geotechnical Study to provide a safe, stable environment for the proposed use of the land for residential development and for the adjacent properties abutting the project site;
- (c) ***The proposed project will not endanger public sewers, storm drains, watercourses, streets, street improvements or other property; will not interfere with existing drainage courses; and will not result in debris being deposited in any public right-of-way*** in that: (a) no streets or sewer, water, or storm drain lines are located within the building area of land to be developed; (b) the project would be designed so as not to augment runoff onto any adjacent properties; (c) the applicant would be required to implement erosion control measures during grading and construction activities to prevent sediments and/or debris from entering the public storm drain system; and (d) the applicant would be required to repair and/or replace any public improvements that are damaged during construction of the project;
- (d) ***Conformity, where applicable, to special concerns relating to the adopted seismic safety element and concerns shown on maps issued by the U.S. Geological Survey and the California Division of Mines and Geology will be achieved*** in that all grading, foundations and structures would be engineered and designed in conformance with applicable geotechnical and soil stability standards of the California Building Code, and in accordance with the recommendations of the project geotechnical study; and
- (e) ***The proposed project will not unacceptably affect the health, safety or welfare of adjacent residents or landowners, nor the citizens of Fremont*** in that the final topography that would be established upon completion of the grading would be designed to be geologically stable and suitable for residential development, to capture all runoff from the site and channel it to the storm drain system, and to prevent erosion and sediments from entering the street and storm drain system.

Private Street Finding:

The most logical development of the land requires private street access because if a standard public street were required with on-street parking, sidewalks and landscape planters along both sides of the street, it would consume so much of the land that the applicant would be forced to consider taller buildings, special paving and treatment of streets would not be permitted, and there would be added difficulty in creating higher densities.

Parking Reduction Finding:

On-street parking on Beard Road would be available along both sides of the project frontage within easy walking distance to and from the project site. Pursuant to FMC Section 8-22003(a)(2)(d), a reduction for guest parking is warranted due to the availability of ample on-street parking along Beard Road.

Tree Removal Finding:

As discussed in the staff report, the project would require the removal of 24 trees located in various areas of the site. The removal of the trees is consistent with the City Tree Preservation Ordinance criteria for removal because the trees substantially impact the placement of the proposed detached units and street improvements. The removal of the trees would not adversely affect the appearance of the subject property as new trees and landscaping would be installed. This project would comply with the ordinance required mitigation for the loss of the trees with payment of an in-lieu fee for the removal of the 24 trees.

CONDITIONS OF APPROVAL:

General Conditions

A-1. **Exhibits.** The project shall substantially conform to Exhibit “C” (Site and Floor Plans, Architectural Elevations and Conceptual Landscape Plans) and Exhibit “D” (Vesting Tentative Tract Map No. 8117 and accompanying Private Street and Preliminary Grading Plans), and all conditions of approval set forth herein.

A-2. **Planned District P-2012-243 Permitted Uses.**

- **Residential Use:** A total of 63 detached residential units shall be permitted. The size, design and siting of the 63 units shall be generally in accordance with Exhibit “C,” except as modified under this approval. Phase I shall include the development of 45 units, and the latter Phase II shall include the remainder of 18 units. The development of private vehicular and pedestrian systems and other utilities and improvements held in common as shown on Vesting Tentative Tract Map No. 8177 (Exhibit “D”), as required under the conditions imposed herein, shall be created to serve the entire development.
- **Religious Facility Use:** The religious use, its facilities and grounds, within the boundaries of the reconfigured area delineated as Phase II on Exhibit “C” (Church Property) shall be permitted to operate in its existing capacity and use as a religious facility in its exact legal conforming condition, size and intensity as previously approved under the January 1977 Conditional Use Permit (CUP U-76-7). The religious use permitted under CUP U-76-7 shall expire and be of no further force and effect upon demolition of the church building. Any material increase in size or intensity of use resulting in expansion of the existing facilities or construction of new permanent facilities on the Church Property shall not be permitted.

A required emergency vehicle access and a vehicular turn around shall be established to serve the development of Phase I within the reconfigured area of the Church Property as an interim measure until such time development of Phase II occurs with the completion of the private street network. Instruments in the form of easements shall be recorded to implement this condition and shall not be relinquished so long as they are necessary to serve the development of Phase I.

A-3. **Exterior Additions Not Permitted.** No exterior additions to the residential structures, including the addition of pre-manufactured sunrooms and/or patio covers, shall be permitted. This requirement shall also be included in the CC&Rs for the project (see “HOA Requirements and Restrictions”).

A-4. **Minor Modifications to Approved Plans.** Minor modifications to the approved Planned District Precise Plan, Vesting Tentative Tract Map No. 8117, Preliminary Grading Plan, and Private Street plan may be made, subject to review and approval of the Planning Manager and City Engineer. The Planning Manager and City Engineer shall retain the authority to determine the level of review required (i.e., depending on the severity or location of the modification, the project may be referred to the Planning Commission or City Council for public comment, review and approval).

- A-5. ***Building and Subdivision Permit Reviews.*** The applicant shall submit plans to the Community Development and Public Works Departments for building permit and subdivision improvement review and approval, respectively, to ensure conformance with the conditions herein, as well as with all relevant codes, policies, and other requirements of the Fremont Municipal Code, State and federal laws.
- A-6. ***Final Colors and Materials Approval.*** The final colors and materials palette for the project shall be subject to review and approval of the Community Development Department as part of the building permit application submittal.
- A-7. ***Addressing.*** An application shall be submitted to the City's GIS Division for approval of the addressing for the development prior to building permit issuance.
- A-8. ***Affordable Housing Ordinance.*** The project shall comply with all applicable provisions of the Affordable Housing Ordinance.
- A-10. ***Development Impact Fees.*** The project shall be subject to Citywide Development Impact Fees. These fees include fees for fire protection services, capital facilities, park facilities and parkland, and traffic facilities. The fees shall be calculated at the rate in effect at the time of building permit issuance. The fees shall be collected prior to building permit issuance.
- A-11. ***City Indemnification.*** Pursuant to Government Code Section 66474.9, the subdivider, or any agent thereof, or successor thereto, shall defend, indemnify and hold harmless the City of Fremont, its officials, employees or agents (collectively "City") from any claim, action or proceeding against the City to attack, set aside, void, or annul, the City's approval concerning this project, which action is brought within the time period provided for in Section 66499.37. The City will promptly notify the subdivider of any such claim, action, or proceeding and cooperate fully in the defense.

Special Project Conditions

Environmental Mitigation:

- B-1. **The following mitigation measures shall be implemented at pre-, during, and post-construction intervals as listed below.**

Mitigation Measure 1

Dust Control: Prior to the issuance of a permit, the following best management practices shall be included in a dust control plan and noted on construction plans with a designated contact person for on-site implementation of the dust control plan.

1. Water all active construction and site preparation work areas at least twice daily and more often during windy periods.
2. Cover all hauling trucks or maintain at least two feet of freeboard.
3. Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas.

4. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.
5. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
6. Enclose or cover securely exposed stockpiles.
7. Replant vegetation in disturbed areas as quickly as possible.
8. Suspend construction activities that cause visible dust plumes to extend beyond the construction site.

Mitigation Measure 2

Should project construction ground disturbance be scheduled to commence between February 1 and August 31, a pre-construction survey shall be conducted by a qualified biologist for nesting birds within the on-site trees or trees proposed for removal as well as trees within 50 feet of the site. This survey shall be conducted 20 days prior to the on-set of construction or tree removal. Results of the survey shall be provided to the City of Fremont prior to initiation construction activities.

If pre-construction surveys undertaken during the nesting season locate active bird nests within or near construction zones or within trees proposed for removal, these nests, and an appropriate buffer zone around them (as determined by a qualified biologist) shall remain off limits to construction or shall postpone the tree removal until the nesting season is over. Suitable setbacks from occupied nests shall be established by a qualified biologist and maintained until the conclusion of the nesting season. Typical exclusion would be a minimum of 50-200 feet in the urbanized context of the site, location, and species. Final determination shall be made by the Community Development Director upon receipt of the biologist's recommendation.

Mitigation Measure 3

Prior to issuance of building permits for the construction of homes, the applicant shall retain the services of an acoustical consultant to verify adherence to the preliminary noise recommendations of the October 2012 "Fremont Gateway, Environmental Noise Assessment" prepared by Charles M. Salter Associates, Inc. and include final acoustic specifications for review by the Community Development Department during building permit plan check.

HOA Requirements and Deed Restrictions

- C-1. A Homeowner's Association (HOA) shall be formed and Covenants, Conditions and Restrictions (CC&Rs), including these imposed conditions, shall be submitted to the Community Development Department (or to the Public Works Department during the tract map improvement plan review process) for review and approval. The following conditions must be satisfied on on-going basis and shall be included in the CC&Rs created for the development:

- a. The HOA shall be required to contract with a professional management firm to handle maintenance operations. Documentation of such contract shall be submitted to the City prior to Final Map approval.
- b. No exterior additions to the residential structures, including the addition of pre-manufactured sunrooms and/or patio covers, shall be permitted.
- c. The HOA shall covenant and be responsible for the maintenance of all commonly owned facilities, including the Private Streets (or private vehicular accessways), which are not maintained by the public utility agency.
- d. All commonly owned facilities shall be well-maintained in a good condition.
- e. The exterior parking of boats, campers, and trailers on the site shall be prohibited. In no event shall household storage preclude the parking of vehicles in a garage area. All parking spaces designated for guest parking on private streets shall be restricted for guest usage only. All new occupants and property owners at the time of purchase or lease shall receive a separate notice on bright color paper of this condition. In addition, residents/owners shall agree to and comply with the following provisions:
 1. Garages shall be used by residents/owners for parking their cars and not for storage, workshops, or other uses which would interfere with the ability to park in the garage the number of cars for which the garage was designed to accommodate.
 2. The HOA shall have the right to inspect any garage interior, with reasonable notice, to determine if a resident/owner is violating parking requirements.
 3. No power equipment, hobby shops, car maintenance (other than emergency work) shall be permitted within the private garage areas where such activities would displace normal use of the garages for day to day parking purposes.
- f. In the interest of aesthetics, uniformity in appearance, safety and security, all garage doors shall be maintained in a closed position, except during entering or exiting movements from the garage.
- g. The HOA shall be responsible for the maintenance of all common areas. Landscaping shall be designed with an efficient irrigation system to reduce runoff and promote surface filtration and to minimize the use of fertilizers, herbicides, and pesticides which can contribute to urban runoff pollution.
- h. The HOA shall periodically provide educational materials on stormwater pollution prevention (as furnished by the City) to all occupants.
- i. The HOA shall be responsible for litter control and sweeping of all paved surfaces of the private street and within the development. All private storm drain systems shall be cleaned immediately before the commencement of the rainy season (October 15).

- j. All roof-mounted and other mechanical equipment shall be screened from view from adjacent public rights-of-way and internal private streets. Satellite dishes are exempt from this condition as more particularly described under federal law.
- k. Garbage, trash or recycling containers shall be suitably concealed in a dedicated area in accordance with the Fremont Municipal Code (FMC), except such containers may be placed at curbside on the designated garbage pick-up day.
- l. A provision shall be included in the CC&Rs stating that the payment of the utility (e.g., water, energy) bills for all common facilities, including its maintenance, are the obligation of the HOA.
- m. Deed restrictions shall be recorded concurrently with the Final Map to create a mandatory HOA or any other mechanism acceptable to the City which is to covenant and be responsible for the following:
 - 1. Maintenance of the facilities in the private street which are not maintained by a public utility agency. Facility maintenance includes utility work resulting from trench backfill failure.
 - 2. Payment of the water and private street lighting (maintenance and energy) bills.
 - 3. Maintenance, repair, replacement and removal of blockages in all building sewers. Maintenance of the building sewers includes repair of any trench failures and/or trench surface material failures.
 - 4. Maintenance and "knock-down" repair of fire hydrants and water facilities along the private street is to be done by the utility agency at the expense of the HOA. The HOA shall be responsible for repainting any fire hydrants along the private street.
- n. Each buyer shall sign an acknowledgment that he/she has read the constitution and bylaws of the HOA and the CC&Rs applying to the development.
- o. The applicant shall provide a complete set of construction plans to the HOA at the time of its formation.
- p. The CC&Rs for the project shall include a disclosure statement to all property owners indicating that the project site is located within a seismic hazard zone for liquefaction. The disclosure statement shall indicate that the buildings have been designed to current code requirements. The disclosure statement shall also indicate that the buildings, site improvements, and utilities are subject to damage during an earthquake and that the buildings may be uninhabitable after an earthquake. This CC&Rs disclosure statement shall be subject to review and approval of the City Engineer prior to Final Map approval.

- q. Rights of City. The CC&Rs shall include the following provision:

Notwithstanding anything to the contrary in this Declaration, no amendment which deals with any of the following matters shall be effective without the prior written consent of the Director of the City's Community Development Department: (a) Any amendment, the design or purpose of which is to eliminate an obligation of the HOA to maintain, manage and repair the common improvements or to lower the standards for maintaining and repairing the common improvements; (b) Any amendment with regard to the fundamental purpose for which the project was created (for example, a change from residential use to a different use); (c) Any amendment to sections (list applicable sections), each of which were required as a condition of approval for the project.

- r. Enforcement by City. The CC&Rs shall include the following provision:

Notwithstanding any provision of this Declaration to the contrary, and with respect to matters within the regulatory powers of the City, the City has the right, but not any duty, to enforce the terms of this Declaration in the City's absolute discretion.

- s. Planned District Standards. A provision shall be included in the CC&Rs that development of the project shall be in compliance with the approved Planned District standards as approved under Planned District P-2012-243.

Stormwater Operations and Maintenance (O&M) Agreement

- D-1. An Operations and Maintenance (O&M) Agreement for Stormwater Treatment shall be submitted to and accepted by the Community Services Department, Environmental Services Division during the tract map improvement plan review process. At a minimum, the following statements or similar shall be included in the O&M agreement:

- a. Stormwater Treatment Measures Maintenance Agreement. The Development is subject to the Stormwater Treatment Measures Maintenance Agreement dated _____, _____ and recorded on _____, _____ as Document No. _____ in the records of Alameda County, CA. Under the Stormwater Treatment Measures Maintenance Agreement, this Development is responsible for ensuring that stormwater treatment measures installed on-site to meet the requirements of the National Pollutant Discharge Elimination System (NPDES) Permit remain in effective operating condition in perpetuity.

Commencing on the date the Homeowner's Association HOA begins operation, the HOA shall assume the rights and duties of the property owner as defined in the Stormwater Treatment Measures Maintenance Agreement. The HOA Board shall have full right, power and authority to act on behalf of the HOA, its members and tenants under the Stormwater Treatment Measures Maintenance Agreement;

- b. Drainage Easements. An easement over and under each lot as the servient tenement is reserved in favor of each other lot as the dominant tenement for the purpose of allowing the HOA agents to enter the lot to maintain that portion of an in-tract storm drainage system

located thereon. No owner or occupant shall commit any act that would interfere with the operation of any drainage system (including rain gardens, bioretention areas, and tree well filters) installed on the owner's lot. Each owner shall maintain the system free of debris and other obstacles at all times. Reciprocal appurtenant easements between each lot and the common area and between adjoining lots are reserved for the flow of surface water;

- c. Storm Drainage Restriction. As part of the original construction of the development, stormwater treatment measures were installed within the development in connection with the development's drainage system. Neither the HOA nor any owner shall do any work, construct any improvement, place any landscaping or otherwise perform any action whatsoever which alters or interferes with the drainage pattern for any lot or any portion of the common areas, except to the extent such alteration in drainage pattern is approved in writing by the City.
- d. Stormwater Treatment Measure Maintenance. The on-site stormwater treatment measures (rain gardens, bioretention areas, and tree well filters) shall be inspected and maintained as detailed in the Stormwater Treatment Measures Maintenance Agreement. The HOA shall maintain an inspection and maintenance record on file made available to the City upon request. In addition, all on-site storm drains shall be cleaned at least annually before commencement of the rainy season (by October 1) of each year.
- e. Landscape Maintenance. Landscaping shall be designed with an efficient irrigation system to reduce runoff and promote surface infiltration. Landscaping shall also be designed and maintained to minimize the use of fertilizers, herbicides and pesticides. Each owner, and the HOA, is encouraged to use integrated pest management practices (less toxic pest management) as a first step in maintaining landscaping. Chemical pesticides and fertilizers should be employed as a last step in managing weeds and other pests.
- f. Good Housekeeping Information. At time of sale, the property owner shall provide to the buyer information on good housekeeping of hazardous products (e.g. proper use and disposal, prohibited discharges, etc.) and stormwater best management practices. Informational material will be furnished by the City. Contact the Environmental Services Division at (510) 494-4570 for informational handouts.

Project Design Conditions (Site, Building, and Landscape)

Prior issuance of building permit, the following conditions shall be met:

Building Design:

- E-1. The final home designs and their siting on Lots 2 and 3 shall be subject to the review and approval of the Community Development Department. The final design of these two specific homes shall be oriented towards the public street (Beard Road) with high-quality architectural detailing on all sides.
- E-2. All home façades, including side and rear façades, that face streets (public and private), common open space and paseos shall be architecturally enhanced to create high-quality attractive homes.

The applicant shall continue to work with Community Development Department staff on the further refinements to the design of the homes during the building permit review process.

- E-3. All garage doors shall be of high quality wood or wood-clad doors.
- E-4. All units shall be pre-wired with exterior junction boxes to provide satellite dish cable connections. In addition, all bedrooms and living rooms shall be pre-wired with phone and cable connections. No external wiring of these utilities shall be permitted.
- E-5. All roof-mounted and other mechanical equipment shall be screened from view from adjacent public rights-of-way and internal private streets.

Site Design (On-site Design Modifications and Requirements):

- E-6. The final design of the rear yard patios for Lots 11 through 15 proposed adjacent to Fremont Boulevard shall be materially consistent with the design as shown on Exhibit C. The subdivider will work with Community Development Department on final refinements of these improvements. No patio encroachments (except for stairs) into the dedicated six-foot public service easement along the back of sidewalk on Fremont Boulevard shall be permitted.
- E-7. The special paving treatment at the driveway entrance into the development shall be extended to the special paving proposed at the through street adjacent to the common open space.
- E-8. Project Gateway and Community Entry Features. The final design and siting of the project gateway and community entry features shall be subject to the Community Development Department's review and approval. No features may be located within the public right-of-way.
- E-9. Landscape construction documents shall be submitted with Final Map Improvement Plans for review and approval, indicating full details regarding: (1) paving materials and textures of walkways and paved pedestrian areas; (2) lighting of walkways and pedestrian areas with low intensity non-glare type fixtures; (3) design and detail for the front yard landscape of individual lots; and (4) landscaping of site and open areas. The landscape design shall meet all nine of the required Bay-Friendly Basic Practices. As part of the landscape plans the applicant shall submit:
 - a. A Layout Plan to illustrate the design of all hardscape elements including walls, fences, gates, light locations, at grade or above grade utility boxes and vaults, walkways and decorative pavement.
 - b. Irrigation Plan utilizing low flow, durable, irrigation equipment that complies with the Water Efficient Landscape Ordinance (WELO) requirements.
 - c. Construction details of raised planters, walkways, paths, benches, walls, fences and other architectural features as appropriate to the project.
- E-10. Landscaping shall be designed with an efficient irrigation system to reduce runoff and promote surface infiltration. Landscaping shall also be designed and maintained to eliminate the use of fertilizers, herbicides and pesticides. Each owner, and the HOA, is encouraged to use integrated pest management practices (less toxic pest management) as a first step in maintaining landscaping.

- E-11. Utility lines shall be located so as not to prohibit the placement of at least one street tree per each lot. In those instances where sidewalks are integral with the curb, the street tree shall be placed in the front yard setback area. If necessary, utility lines shall be placed under or directly adjacent to the driveway area.
- E-12. The design team shall work with staff to refine the design of the stormwater treatment areas to create an attractive, drought tolerant and low maintainable design to compliment the adjacent landscape; stormwater treatment areas will be materially consistent with the sizes of stormwater treatment areas shown on the proposed plans.
- E-13. The applicant shall mitigate the removal of 24 protected trees pursuant to Tree Preservation Ordinance Sections 4-5107 (1) and (2). An in-lieu fee shall be paid at the time of building permit issuance for the 24 protected trees that will be removed (\$250 per tree x 24 = \$6,000). The amount of the fee equals the per unit cost to the City for a 24-inch box tree as established by the City's last award of a contract following a competitive bid for such work.
- E-14. An arborist approved by the City shall assist the design team and City staff during the preparation of construction documents and during construction to preserve and maintain the existing evergreen ash tree. The arborist shall also prepare Preservation and Maintenance Manual submitted with Tract Improvement Plans for ongoing preservation and maintenance of the tree.
- E-15. The final design, material selection and color treatment of project walls, fencing, mailboxes and other site elements shall be subject to the review and approval of the Community Development Department during the preparation of the construction documents.
- E-16. The design team shall coordinate the placement of utilities to maximize the space available for trees. All street trees shall be a minimum 24-inch box size with the final tree selection approved by the Community Development Department.
- E-17. The location of all proposed trees shall be coordinated with existing trees to compliment rather than compete with the existing trees.

Subdivision Design Improvements and Requirements:

- E-18. The applicant/developer shall apply for and obtain a Caltrans (State) encroachment permit for all improvements within State right-of-way. The Caltrans encroachment permit shall be obtained prior to approval of the Final Map. If, through diligent processing of plans through Caltrans, the developer is unable to obtain the Caltrans encroachment permit prior to the time when the final map and subdivision improvement plans are ready for approval, the improvement plans may be revised to reflect the fact that the Caltrans permit is still required and that no work can be started in Caltrans right-of-way. This shall be subject to City Engineer review and approval during the subdivision plan checking process.
- E-19. The applicant/developer shall submit their encroachment permit application to Caltrans for the proposed development shortly after the City Council's approval of Planned District PLN2012-00243. A copy of the completed Caltrans encroachment permit application package shall be submitted by the applicant with the first subdivision plan check for the street improvement plans and Final Map.

- E-20. Fremont Boulevard – The applicant/developer shall dedicate right-of-way along the project's Fremont Boulevard frontage such that the half-street right-of-way width of Fremont Boulevard is 65 feet. The applicant/developer shall offer to dedicate the required right-of-way along Fremont Boulevard to the State (Caltrans). If the State prefers not to accept the right-of-way dedication, the applicant/developer shall then dedicate the required right-of-way to the City of Fremont.
- E-21. Fremont Boulevard – The applicant/developer shall install street improvements along the project's Fremont Boulevard frontage. Required street improvements include, but are not limited to: removal of existing asphalt concrete dike; construction of pavement, curb, gutter, new 11-foot separated sidewalk/planting strip (five-foot wide sidewalk and six-foot wide planting strip inclusive of curb) and drainage improvements; installation of street trees and landscape; relocation of existing utilities and street light poles; and grind and overlay of the existing roadway pavement per the City of Fremont *"Street Cutting Policy – Multiple Cuts within One Block."*
- E-22. Beard Road – The applicant/developer shall install street improvements along the project's Beard Road frontage. Required street improvements include, but are not limited to: construction of sidewalk, driveways and drainage improvements; installation of street lights, landscape and street trees; and grind and overlay of the existing roadway pavement per the City of Fremont *"Street Cutting Policy – Multiple Cuts within One Block."* Where sidewalk does not currently exist, or where significant amounts of sidewalk will be replaced, the developer shall install new 4.5-foot separated sidewalk and a 5.5-foot planting strip. The 4.5-foot sidewalk shall be constructed such that the back-of-walk is located at the existing right-of-way line. The applicant/developer shall also be responsible for the removal and replacement of damaged curb, gutter and sidewalk along Beard Road per City Standard Details.
- E-23. Corner of Fremont Boulevard and Beard Road – The applicant/developer shall install complete street improvements at the northeast corner of the Fremont Boulevard and Beard Road intersection. Required street improvements include, but are not limited to: removal of existing asphalt concrete dike and metal beam guardrail; construction of new curb, gutter, sidewalk, curb ramps, landscaping and drainage improvements. The radius of the new curb return shall be 30 feet, measured to the new face-of-curb.
- E-24. Undergrounding of Existing Joint Utility Pole – The applicant/developer shall remove the existing joint utility pole and all associated equipment and overhead lines near the corner of Fremont Boulevard and Beard Road. Utilities to remain shall be relocated underground. The new utility locations are subject to review by the City Engineer.
- E-25. Undergrounding of Existing Joint Utility Pole – Removal of the existing joint utility pole near the corner of Fremont Boulevard and Beard Road will require existing overhead utility lines crossing Fremont Boulevard to be placed underground. Should the State (Caltrans) either deny the undergrounding of the existing utility lines beneath their facilities (Fremont Boulevard) or delay approval of the utility undergrounding beyond a timeframe that is considered reasonably acceptable by the City or would cause undue hardship on the applicant/developer's development schedule, the developer may submit an alternative utility relocation plan for review and approval by staff and City Council.

- E-26. A minimum six-foot wide public service easement shall be dedicated along the Fremont Boulevard and Beard Road frontages of the project site. Project entry and monument signs and walls shall not be located within the public service easement.
- E-27. The proposed bulb-out at the T-intersection frontage of Lot 23 shall be revised. A minimum roadway width of 20 feet shall be maintained through the intersection.
- E-28. During the building phase of the project, applicant/developer shall submit a striping and signing plan on-site and off-site. Striping and signing plan shall include, No Stopping Fire Lane signs (R26F), stop signs, legend and limit lines, street name signs, parking stall striping, red curbing and other needed striping and signing.
- E-29. A grading permit issued for the project shall be in accordance with the Grading, Erosion, and Sediment Control Ordinance (Chapter 4, Title VIII of the Municipal Code). Grading shall be subject to the approval of the City Engineer.
- E-30. The applicant/developer shall provide an erosion control plan, as part of the project plans, subject to review and approval by the City Engineer.
- E-31. Site grading shall not obstruct natural flow from abutting properties or divert drainage from its natural watershed.
- E-32. A disposal site for the export materials or source for the import materials shall be approved by the City prior to the approval of a grading permit. The off-site haul truck route for the excess dirt or import fill shall be subject to the approval of the City Engineer. The import source or export destination, if within the City of Fremont, may require a separate grading permit.
- E-33. Prior to issuance of a permit for land disturbance greater than one acre, the applicant/developer shall file a Notice of Intent with the State of California Water Resources Control Board and receive the State assigned WDID number. The applicant/developer shall provide a copy of the Storm Water Pollution Prevention Plan (SWPPP) for City review and maintain a copy on the job site.
- E-34. The applicant/developer shall submit a detailed geotechnical report. The report shall include recommendations regarding pavement sections. The project plans shall be designed in accordance with the required geotechnical report. Grading shall be supervised by an engineer registered in the State of California to do such work.
- E-35. The Project Geotechnical Engineer shall be retained to review and approve the final grading plans and specifications prior to permit issuance.
- E-36. The minimum drainage slope in earthen swales shall be 1% and shall be consistent with the Building Code requirements. Where feasible, the developer/applicant will create drainage slopes in earthen swales of 1.5%.
- E-37. The project storm drain system shall conform to City standards and shall be subject to review and approval of the City Engineer and the Alameda County Flood Control and Water

Conservation District. Drainage calculations shall be submitted with the grading and drainage plans for the project.

- E-38. The provided Stormwater Management Plan is approved in concept only. Approval of the final Stormwater Management Plan is subject to City Engineer approval prior to Final Tract Map issuance. Approval is subject to the developer providing the necessary plans, details, and calculations that demonstrate that the proposed stormwater treatment measures and hydromodification flow duration controls comply with the standards established with the most recent San Francisco Bay Regional Water Quality Control Board National Pollutant Discharge Elimination System (NPDES) Permit.
- E-39. Proposed curb elevations for the street system shall not be less than 1.25 feet above the hydraulic grade line (design water surface) and at no point should the curb grade be below the energy grade line. On-site grades are to be a minimum of 0.75 feet above the hydraulic grade line.
- E-40. All new utility service connections, including electrical and communications, shall be installed underground. Electrical transformers shall be installed in underground vaults within an appropriate utility easement or public service easement.

Solid Waste:

- E-41. Garbage and recycling requirements are explained in the City of Fremont *Waste Handling Guidelines* document. Applicant/developer shall be responsible for incorporating these guidelines into the project. The information is available on the City's website at: www.fremont.gov/whg.
- E-42. Each residence shall subscribe to garbage, recycling and organics collection and provided with three carts. A 27-square-foot storage space at 48-inch in height is required in the garage for storage of the three carts. If sufficient garage space is not available, residents must have unrestricted access to the same amount of exterior storage in the side or back yards to ensure the carts remain out of public view. A grass or all-weather surface shall be provided to smoothly roll the carts between the cart storage area and set out area on the street in front of the dwelling unit.
- E-43. The applicant/developer shall ensure adequate, accessible and convenient areas for collecting and loading of materials by the garbage and recycling trucks. There must be sufficient room for garbage trucks to turn around or drive through on the drive paths. The required turning radius for garbage trucks is 22.5 feet for the inside radius and 37.5 feet for the outside radius. Due to the insufficient turn around for a garbage truck to turn around to serve Lots 1-3, the future tenants or homeowners of said lots shall be required to place their three garbage and recycling carts in a staging area further down on the street, in a mutually agreed upon location. Adequate exterior space shall be provided for garbage set-out and pickup such that garages and driveways will not be blocked. A plan that meets this requirement shall be submitted to the Community Development Department for review and approval.

Demolition and Construction:

- E-44. A demolition permit shall be required for removal of structures. During demolition and construction, applicant/developer shall comply with Fremont's Construction and Demolition Debris Recycling Ordinance.
- E-45. The applicant/developer shall submit a *Waste Handling Plan* prior to beginning demolition and construction. The *Waste Handling Plan* shall be approved before permits are issued and must:
- Provide an estimate of the number of tons or cubic yards and type of debris generated; and
 - List the names of the approved recycling facilities that will be used.
- E-46. During demolition and construction, the applicant/developer and contractor shall ensure that debris is removed from the site by the City's contracted waste hauler (currently Allied Waste Services). Alternately, the construction or demolition contractor may remove debris from the premises, using their own employees, equipment and vehicles, as part of a total construction or demolition service offered by that contractor. Contractors who self-haul construction or demolition debris should deliver the material to the Fremont Recycling and Transfer Station, located at 41149 Boyce Road, Fremont.
- E-47. During demolition and construction, 100 percent of the asphalt and concrete must be reused or recycled. At least 65 percent of the remaining debris generated from the project must be reused or recycled, to comply with the CalGreen building code requirements. Applicant shall save all disposal and recycling receipts to turn in at the completion of the project and to receive final approval.
- E-48. Construction and demolition debris destined for recycling shall be separated from the remaining garbage generated by the project. Separated recycling material may not contain more than 10 percent garbage or other non-recyclable material by weight or volume.
- E-49. Plant and tree debris shall not be mixed with other wastes.
- E-50. Within 30 days of completion of the work, the applicant/developer shall submit a *Debris Disposal & Diversion Report* documenting actual tons of debris recycled, along with all disposal receipts or weight tags from the project. Failure to comply or provide documentation may result in a penalty of \$1,000 per ton not recycled.
- E-51. All contractors, subcontractors, and vendors shall be licensed to do business in Fremont.

Vesting Tentative Tract Map, Private Street, and Preliminary Grading Plan

Vesting Tentative Tract Map Conditions:

- F-1. The project shall conform to Exhibit "D" (Vesting Tentative Map No. 8177), all conditions of approval set forth herein, and the conditions of approval of Planned District P-2012-243.
- F-2. Approval of this Vesting Tentative Map shall be effective only after City Council approval of Planned District P-2012-243 and adoption of a Mitigated Negative Declaration under CEQA.

- F-3. Approval of this Vesting Tentative Map shall expire according to the provisions of the State Subdivision Map Act and any amendments thereto and applicable provisions of the Fremont Municipal Code consistent with the State Subdivision Map Act. This Vesting Tentative Map shall expire 24 months after the date of Vesting Tentative Map approval unless extensions are approved in accordance with the Subdivision Map Act.
- F-4. This Vesting Tentative Map may employ multiple phased Final Maps, which shall be prepared in accordance with state and local laws. Prior to the approval of a phased Final Map creating a lot for development of a residential structure, the subdivider shall improve or agree to improve, in accordance with the Subdivision Ordinance, all streets, thoroughfares, public ways, utilities, and easements in the subdivision and adjacent thereto as required to serve said lot.
- F-5. The Final Map and subdivision improvement plans shall be submitted to the Public Works Department for review to insure conformance with relevant codes, policies, and other requirements of the Fremont Municipal Code.
- F-6. The subdivider shall provide a mylar copy and an electronic copy (in PDF format) of the map after the map is recorded. The subdivider shall provide an electronic copy (in PDF format) of the subdivision improvement plan record drawings prior to City Engineer approval and acceptance of the constructed subdivision improvements.
- F-7. The subdivision improvement plans shall include stormwater treatment plans and calculations that comply with Planned District PLN2012-00243 and that identify Best Management Practices (BMPs) appropriate to the uses conducted on-site to effectively prohibit the entry of pollutants into storm water runoff.
- F-8. The provided Stormwater Management Plan is approved in concept only. Final approval is subject to the developer providing the necessary plans, details, and calculations that demonstrate the plan complies with the Municipal Regional Municipal Stormwater Permit, subject to City Engineer approval prior to recording the Final Map.
- F-9. Common area subdivision improvements, private streets, and all other subdivision improvements owned or maintained by the property owners association are subject to review and approval by the City Engineer prior to Final Map approval. Such improvements include, but are not limited to: roadway pavement; curb and gutter; sidewalks; curb ramps; driveways; private street monuments; street lights and appurtenances; drainage facilities; utilities; landscape and irrigation facilities; open space landscaping; stormwater treatment facilities; signage; pavement striping and fire hydrants. The developer shall bond for these improvements in accordance with FMC Section 8-1426.
- F-10. Above ground architectural and building features that project over proposed property lines shall be permitted for the detached units by easement recorded on the Final Map. Such features include, but are not limited to, eaves, bay windows, balconies, porches, landings, and stairways. The details of these easements, including dimensions and descriptions, shall be included on the Final Map. Foundations for detached units must be contained within the individual lot.

- F-11. All existing buildings within the proposed subdivisions shall be demolished prior to recording the Final Map for the subdivision in which the building is located (e.g., the existing church facilities will not be demolished until the Phase II Final Map approval is requested).
- F-12. The streetlight plan and joint trench plan shall be submitted by the applicant with the first subdivision plan check for the street improvement plans and Final Map. The final streetlight plan and joint trench plan shall be completed prior to Final Map approval.
- F-13. The subdivider shall request P.G.& E. to commence, or shall have its joint trench consultant commence, with the design of the utility underground work for the proposed development after the City Council's approval of the Planned District and Vesting Tentative Tract Map 8177.

SUBDIVIDER, PLEASE NOTE:

The fees, dedications, reservations and/or other exactions imposed on this project are those listed in the foregoing conditions of this tentative tract map approval. The subdivider is hereby notified that the 90-day period in which the subdivider may protest these fees, dedications, reservations and other exactions pursuant to Government Code Section 66020(a) begins on the date of approval of this tentative tract map. If the subdivider fails to file a protest within this 90-day period complying with all the requirements of Government Code Section 66020, the subdivider will be legally barred from later challenging such actions.

Private Street Conditions:

- F-14. Approval of Private Street (PLN2012-00243) shall become effective upon Final Map approval.
- F-15. The applicant/developer shall dedicate right-of-way and install complete street improvements for the internal private streets as shown on the tentative map.
- F-16. All private street names shall be approved by the City prior to Final Map approval.
- F-17. A Private Vehicle Access Way (PVAW) and a Public Utility Easement (PUE) shall be established over the entire private street right-of-way. The PUE dedication statement on the Final Map shall recite that the PUE is available for, but not limited to, the installation, access and maintenance of sanitary and storm sewers, water, electrical and communication facilities.
- F-18. The applicant/developer shall dedicate emergency vehicle access easements (EVAE) over the clear pavement width on private streets within the subdivision. The easement geometry shall be subject to the approval of the City Engineer.
- F-19. Fire hydrants shall be located along the private street as determined by the Fremont Fire Department.
- F-20. Private street grading and drainage shall be done according to public street standards, subject to review and approval by the City Engineer prior to Final Map approval.
- F-21. The private street pavement shall be designed on the basis of a traffic index using predicted traffic generation and a 30-year pavement design life. In no case shall the traffic index be less than 5.5. Pavement design sections shall be subject to approval of the City Engineer.

- F-22. Safety lighting is to be provided on the private street. Lights shall utilize "vandal resistant" enclosures and shall have sufficient power and spacing to provide a minimum maintained foot-candle level of 0.12.
- F-23. A signpost, to which is attached a sign having an area of at least fifteen inches by twenty-one inches, shall be installed at or near the private street entrance. The name of the private street shall be placed on this sign in clearly legible four-inch letters. The sign shall be painted, in at least one-inch letters, "Private Property. Not dedicated for public use."
- F-24. On-site private streets shall be posted for "No Parking," except in those areas designed to accommodate on-street parking, as shown on the Vesting Tentative Map and Planned District site plan.
- F-25. The connection between the private vehicle access way and the public street shall be by a standard driveway.

Preliminary Grading Plan Conditions:

- F-26. Approval of this Preliminary Grading Plan shall run concurrent with the approval and subsequent extensions of Vesting Tentative Tract Map No. 8177. Approval of this Preliminary Grading Plan shall terminate upon the expiration of Vesting Tentative Tract Map No. 8177.
- F-27. Approval of this Preliminary Grading Plan does not extend to the final detailed design approval necessary to be accomplished in connection with the development plans.
- F-28. The applicant may be allowed grading deviation up to a maximum of one foot (plus or minus) between the preliminary grading plan and the final grading plan. Deviation over one foot may be referred to the Planning Commission, subject to approval of the City Engineer.

During Construction (Conditions that must be satisfied on an on-going basis)

- G-1. The applicant/developer shall immediately notify the Fremont Fire Department, Hazardous Materials Unit of any unknown underground pipes, tanks or structures, any suspected or actual contaminated soils, or any other environmental liabilities encountered during site development activities.
- G-2. Construction hours shall be limited in accordance with Section 8-2205 of the Fremont Municipal Code, and notes to this effect shall be placed on the cover sheet of the construction plans and on an all-weather notice board (format and content specified by City) conspicuously placed adjacent to the most visible right of way for the duration of the construction activity as follows:
 - a. Monday-Friday, 7 a.m. to 7 p.m.
 - b. Saturdays and Holidays, 9 a.m. to 6 p.m.
 - c. Sundays, no construction activity allowed

Requirements to be Completed Prior to Request for Final Inspection

- H-1. Within 30 days of completion of construction of the project, the applicant/developer shall file a Waste Disposal and Diversion Report documenting the actual diversion and disposal of

construction and demolition debris, along with receipts and weigh tags from the project. Failure to comply or provide documentation may result in a penalty of \$1,000 per ton not recycled.

- H-2. Upon completion of grading, the project engineer that prepared the final approved grading plan shall submit to the City a statement that the as-built grading conditions do not deviate from the approved plan by more than one foot of vertical elevation, subject to the review and approval of the Public Works Department prior to the issuance of occupancy permits for each structure.
- H-3. Upon completion of construction, the project architect shall submit a letter to the City certifying that the buildings have been constructed in conformance with the approved architectural plans, subject to the review and approval of the Community Development Department.
- H-4. Upon completion of all landscape work, the project landscape architect shall submit a letter to the Public Works Department certifying that the on-site and streetscape landscaping have been constructed in conformance with the approved landscape and irrigation plan, subject to the review and approval of the City Landscape Architect.

END OF CONDITIONS